

2014

# The Father's Project Pilot: Project in Hennepin County to Provide Attorneys for Noncustodial Fathers at the Chips Stage of Child Protection Cases

Lisa McNaughton

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

## Recommended Citation

McNaughton, Lisa (2014) "The Father's Project Pilot: Project in Hennepin County to Provide Attorneys for Noncustodial Fathers at the Chips Stage of Child Protection Cases," *William Mitchell Law Review*: Vol. 40: Iss. 3, Article 12.  
Available at: <http://open.mitchellhamline.edu/wmlr/vol40/iss3/12>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact [sean.felhofer@mitchellhamline.edu](mailto:sean.felhofer@mitchellhamline.edu).

© Mitchell Hamline School of Law

## **“THE FATHER’S PROJECT PILOT”: PROJECT IN HENNEPIN COUNTY TO PROVIDE ATTORNEYS FOR NONCUSTODIAL FATHERS AT THE CHIPS STAGE OF CHILD PROTECTION CASES**

Lisa McNaughton<sup>†</sup>

I. INTRODUCTION.....	1132
II. HISTORY OF THE FATHER’S PILOT PROJECT.....	1133
III. COURT RECORDS REVIEW .....	1135
IV. SURVEY RESULTS .....	1136
V. CURRENT STATUS OF THE PILOT PROJECT.....	1142
VI. CONCLUSION .....	1142

### **I. INTRODUCTION**

Noncustodial fathers usually have limited, if any, participation in the early stages of the child protection process.<sup>1</sup> This routine failure to include noncustodial fathers in the process has been identified as a concerning problem by the American Humane Association, the American Bar Association, Center on Children and the Law, National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System, and the National

---

<sup>†</sup> Managing Attorney, Juvenile Court, Office of the Public Defender, Hennepin County-Fourth Judicial District. JD, William Mitchell College of Law, 1988.

1. This article is discussing the CHIPS stage of the child protection proceedings. This is the stage of the case in which a child in need of protection or services petition is filed. See *CHIPS (Children in Need of Protection) Court*, MINN. JUD. BRANCH, <http://www.mncourts.gov/district/8/?page=1117> (last visited Jan. 2, 2014). The article is not referring to situations in which the father is a legal custodian. It also is not referring to the permanency stage of the case (i.e., the filing of a termination of parental rights or transfer of legal custody petition). At the time of the pilot survey, two noncustodial mothers were also provided counsel through this process.

Fatherhood Initiative.<sup>2</sup> All of the above-mentioned groups point out that

[i]dentifying and locating fathers early helps children establish or maintain important connections with their fathers and paternal relatives. It also reduces delays in permanency, if the goal is adoption. Establishing paternity quickly after a putative father is located is critical to ensuring the case moves quickly and the father can assert and protect his constitutional rights to the care and custody of his child.<sup>3</sup>

Most importantly, in protection cases where, by definition, the child's environment is being called into question, it is helpful to have input and potential help from all relevant parties.

## II. HISTORY OF THE FATHER'S PILOT PROJECT

In Minnesota, it is not until a case reaches the stage of permanency, such as termination of parental rights or transfer of legal custody, that a noncustodial parent (generally the father) receives an attorney.<sup>4</sup> Not only local child protection stakeholders have expressed concern about the lack of fathers' early involvement, but members of the Children's Justice Initiative<sup>5</sup> (CJI) have

---

2. See NAT'L QUALITY IMPROVEMENT CTR. ON NON-RESIDENT FATHERS & THE CHILD WELFARE SYS., AM. HUMANE ASS'N, IDENTIFYING AND LOCATING NONCUSTODIAL FATHERS IN CHILD PROTECTION CASES 1 (2011), *available at* [http://site.americanhumane.org/fatherhooddocs/engaging\\_fathers\\_judge\\_card3.pdf](http://site.americanhumane.org/fatherhooddocs/engaging_fathers_judge_card3.pdf).

3. *Id.*

4. Minnesota Rules of Juvenile Protection Procedure 21.01, subdivision 3 provides that "[i]n addition to the parties identified in subdivision 1," providing in part that a party is the child's legal custodian, if the case is filed as a termination of parental rights or other permanent placement matter, "the parties shall also include: (a) the child's parents, including any noncustodial parent and any adjudicated or presumed father."

5. The CJI is described by the Minnesota Judicial Center as a collaboration between the Minnesota Judicial Branch and the Minnesota Department of Human Services. The purpose of the initiative is for these two state entities to work closely with the local juvenile courts, social services agencies, county attorneys, public defenders, court administrators, guardians ad litem, tribes, and other key stakeholders in each of Minnesota's 87 counties to improve the processing of child protection cases and the outcomes for abused and neglected children. The overall objective is to timely find safe, stable, permanent homes for abused and neglected children, first through reunification with the child's parents if that is safe or, if not, through

also expressed this concern. Two of CJI's best practices are to encourage early involvement of fathers and to request that the social services department locate and serve fathers at the earliest possible opportunity.<sup>6</sup>

In 2012, a number of Hennepin County–Fourth Judicial District child protection stakeholders<sup>7</sup> met to discuss how they could better include fathers during the initial stages of a child protection proceeding. The group was aware that recently implemented social service practices, in addition to the focus from the CJI, could result in more noncustodial fathers appearing in court. If the case is at the CHIPS stage, noncustodial fathers would be appearing in court without counsel.<sup>8</sup>

It was decided to examine what effect including noncustodial parents earlier in the process would have on the child protection proceedings. Thus, a limited number of part-time contract attorneys were hired to represent indigent, noncustodial, participant fathers.<sup>9</sup> The program was extended to include

---

another permanent placement option. When identifying and implementing improvements, the project's goal is for all stakeholders to operate "through the eyes of the child" so as to achieve child safety, permanency, and well-being.

*Children's Justice Initiative*, MINN. JUD. BRANCH, <http://www.mncourts.gov/?page=148> (last visited Jan. 2, 2014). CJI has been in existence in Hennepin County since 2001. *See* Children's Justice Initiative, Minn. Supreme Court & Minn. Dep't of Human Servs., Implementation Guide 1 (2006) (on file with author).

6. The CJI has regional team meetings. The agenda for the 2010 meeting included the topic of "Engaging Nonresident Fathers." *See* CHILDREN'S JUSTICE INITIATIVE, MINN. DEP'T OF HUMAN SERVS., AGENDA: REGIONAL CJI TEAM MEETING (Sept.–Oct. 2010), *available at* [http://www.mncourts.gov/Documents/0/Public/Childrens\\_Justice\\_Initiative/Agenda\\_\(generic\).pdf](http://www.mncourts.gov/Documents/0/Public/Childrens_Justice_Initiative/Agenda_(generic).pdf); *see also* CHILD SAFETY & PERMANENCY DIV., MINN. DEP'T OF HUMAN SERVS., WORKING WITH FATHERS: A PROGRAM IMPROVEMENT RESOURCE 2 (2009), *available at* <https://edocs.dhs.state.mn.us/lfs/legacy/DHS-5575A-ENG>; Vivek Sankaran, *Advocating for the Constitutional Rights of Nonresident Fathers*, in JESSICA R. KENDALL & LISA PILNIK, ENGAGING NONRESIDENT FATHERS IN CHILD WELFARE CASES: A GUIDE FOR COURT APPOINTED SPECIAL ADVOCATES 11 (2009), *available at* [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/2009\\_NRFlow.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/2009_NRFlow.authcheckdam.pdf).

7. This group included county administration, judicial officers, and attorneys.

8. The noncustodial father would be a participant to the case at this stage of the case. Participants to the case include "any parent who is not a legal custodian and any alleged, adjudicated, or presumed father." MINN. R. JUV. PROT. P. 22.01(b).

9. The author interviewed and hired these attorneys.

appropriate noncustodial mothers. The court would determine eligibility<sup>10</sup> and send the information to the public defender's office staff, who administered the contracts.<sup>11</sup>

The process began in the fall of 2012. The impact of providing attorneys at the early stage of the process was reviewed by Juvenile Court Administration. This article will describe the results of a court records review and survey sent to various participants in child protection cases.

### III. COURT RECORDS REVIEW

In addition to sending a survey, court administration reviewed court records for each of the eighty-three cases in which fathers received attorneys through the pilot.<sup>12</sup> Court administration reviewed the prehearing reports for these cases.<sup>13</sup> In 94% of the cases, the fathers received a case plan.<sup>14</sup> The level of the fathers' involvement differed: 38% had actively participated with their case plan,<sup>15</sup> 26% had some compliance with their case plan,<sup>16</sup> 16% had unknown compliance,<sup>17</sup> and 32% had not complied with their case plan.<sup>18</sup>

After receiving attorneys through the pilot program, fathers appeared in court 78% of the time.<sup>19</sup> Finally, 19% of fathers had their children placed with them.<sup>20</sup>

---

10. The court followed the same procedure for determining eligibility for this pilot project that it does for public defender eligibility.

11. The court sends a copy of the petition, any relevant reports, and the financial eligibility forms to the public defender's office staff who then assigns the case to one of the project attorneys.

12. See E-mail from Robert Sommerville, Court Operations Manager, Minn. Fourth Judicial Dist.-Juvenile Div., to Judge Margaret Daly and author (June 10, 2013, 04:06 CST) (on file with author).

13. *Id.*

14. See *id.* (noting that some cases were not included in the statistic because it could not be determined if the father had received a case plan in those cases).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

## IV. SURVEY RESULTS

The survey contained a number of statements about the pilot, and the responding professionals were asked to select one of five options in response: strongly disagree, disagree, neutral, agree, or strongly agree.<sup>21</sup> The options were coded by numbers from one to five, with one corresponding to strongly disagree and five corresponding to strongly agree.<sup>22</sup> The respondents were also asked to include comments to each answer, and those comments were included in the results.<sup>23</sup>

The survey was sent to judges, judicial staff, social workers, and county attorneys who were involved in a Father's Pilot Project case during the first nine months of the pilot.<sup>24</sup> The survey was sent to a total of seventy-seven people who were given two weeks to complete the survey.<sup>25</sup>

The statement that received the highest agreement score was: "I support having all eligible fathers receive representation on CHIPS cases."<sup>26</sup> The average score for this statement was 4.67.<sup>27</sup> There were several comments to this statement:

- "Fathers have been relegated to the back of the courtroom and that is a bad message to send when we are often in a position to be scrambling for temporary and permanent placements. Involving them by offering representation may ultimately encourage them to be more involved, better dads even if the children return to the mother. This project may change the way the system thinks about these dads."<sup>28</sup>
- "I think it's a big help to the fathers and to our cases."<sup>29</sup>
- "I suppose, if there is a father who has potential to father, the involvement of an attorney on his behalf may increase his understanding of the case and need to work a case plan and position himself to be a viable placement."<sup>30</sup>

---

21. Hennepin Cnty.-Fourth Judicial Dist., Hennepin County Father's Project Survey Results 1 (2013) (on file with author).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 7.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

The statement with the second-highest agreement score was: "The involvement of an attorney to represent a participant father had a positive impact on the case."<sup>31</sup> The average score for this statement was 4.44.<sup>32</sup> There were a number of observations to this statement, which included the following:

- "It made it easier to determine what the father's position was and to move the case forward."<sup>33</sup>
- "It seemed like fathers would appear for the first hearing, find out that they were not eligible for a PD because they were a participant and they would rarely come back again. If they did come back it was towards the end of the case when the parties were hoping to establish permanency for the children, so it only added to the length of the case."<sup>34</sup>
- "It provides balance and the child benefits from the involvement of both parents."<sup>35</sup>
- "In my experience, having an attorney for participant dads/moms makes them more likely to engage in case plan services, more likely to attend court, and more likely to end up as a placement resource or have their relatives chosen as a placement option. This improves the outcomes for children by expanding options."<sup>36</sup>
- "I think it is helpful for the fathers in knowing that they have a right to be heard and that there is someone provided for them to help them maneuver through the process."<sup>37</sup>

The statement with the third-highest agreement score was: "The presence of an attorney to represent the father made the case run more smoothly."<sup>38</sup> The average score for this statement was 4.39.<sup>39</sup> Comments to this statement included:

- Having an attorney "allowed the case to proceed with fewer delays due to lack of contact with the father."<sup>40</sup>

---

31. *Id.* at 2.

32. *Id.*

33. *Id.*

34. *Id.* at 2-3.

35. *Id.* at 3.

36. *Id.*

37. *Id.*

38. *Id.* at 4.

39. *Id.*

40. *Id.*

- “Since the fathers have had their own lawyers they no longer ask as many questions of the clerks and other parties, so things seem to run more smoothly.”<sup>41</sup>
- “I find that our pre-hearing discussions are greatly streamlined by having another attorney represent the dad, rather than trying to explain the procedures to them directly. And our cases can proceed to permanency quicker because by having the father engaged from the very beginning, rather than only becoming engaged once a permanency petition is filed, the decision of whether the father is an appropriate caregiver can be made much more quickly.”<sup>42</sup>

The statement with the fourth-highest agreement score was: “In cases where the father was represented by counsel, he was more knowledgeable of his rights and responsibilities.”<sup>43</sup> The average score for this statement was 4.27.<sup>44</sup> Comments to this statement included:

- “I would say so.”<sup>45</sup>
- “There is still quite a bit of confusion. And frankly, even attorneys sometimes get confused about what a non-custodial parents rights are. Many fathers who are adjudicated as the father, and possibly paying child support, are confused to find out they don’t have custodial rights. They often feel the system isn’t fair to them. But it certainly helps to have another person, who the father feels is on his side, explain these legal rights.”<sup>46</sup>
- “Without a lawyer there, the judge has the responsibility of advising the father of his rights. This can put the judge in an uncomfortable position of appearing to spend more time on the interests of one participant.”<sup>47</sup>
- “Without a lawyer a father must rely on the Department or the court to indicate his rights.”<sup>48</sup>

The statement with the fifth-highest agreement score was: “The involvement of the attorney had a positive impact on the

---

41. *Id.*

42. *Id.*

43. *Id.* at 6.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*



father's involvement in the case."<sup>49</sup> The average score for this statement was 4.16.<sup>50</sup> Comments to this statement included:

- "The participant fathers are a lot more likely to come to court now and when they do come they are more engaged and informed about what is going on."<sup>51</sup>
- "I think it helps that there is someone who understands the system and can explain it to the participant dads and advocate effectively for them. What otherwise would be a very overwhelming process becomes more manageable, and that leads them to participate more in court. It also helps to have someone other than the social worker explain the case plan to the father and why he should participate in it. It seems to reduce the level of suspicion they have about being asked to participate in remedial services."<sup>52</sup>

The statement with the sixth-highest agreement score was: "The opinion of the father was heard more than it otherwise would have been."<sup>53</sup> The average score for this statement was 3.94.<sup>54</sup> Comments to this statement included:

- "Usually the fathers are relegated to sitting in the back and are overlooked until the case moves to permanency, when they become parties and get a lawyer. With the project they have a lawyer to speak for them, advise them and to be part of email exchanges and chamber conferences."<sup>55</sup>
- "The participant fathers were not even called upon in court before they were appointed lawyers through the father's project."<sup>56</sup>
- "Most participant dads are hesitant to speak during hearings if they are unrepresented. They usually aren't sure what decisions the court is going to make at any given hearing. So if they speak, they are often giving an opinion on a subject that is irrelevant to the issues being considered. Attorneys help them focus on the issue at hand and articulate an appropriate opinion."<sup>57</sup>

---

49. *Id.* at 3.

50. *Id.*

51. *Id.*

52. *Id.* at 4.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 5.

- “In most cases I think the father would have been heard regardless. Oftentimes however the fathers don’t know what to say and with the aid of an attorney they can be heard in a way that is respectful to the court, themselves and the other parties.”<sup>58</sup>

The statement with the seventh-highest agreement score was: “The father was more strongly considered as a placement option due to his representation by an attorney.”<sup>59</sup> The average score for this statement was 3.61.<sup>60</sup> Comments to this statement included:

- “As an example, I had a case where the child had been removed from both the mother and fathers care after the mother assaulted the father. There was a no-contact order put in place so the parents split. The mother was not an appropriate option because of her anger/mental health issues. The father did not seem to have similar issues. If he had been represented from the beginning, I think there would have been a stronger push to consider him as a placement resource. There was a delay for a couple of hearings in having the father’s project attorney assigned to him. It wasn’t until the hearing that his attorney was assigned that the decision was ultimately made to place with the dad, and now it looks as though the result will be a transfer of custody to the dad.”<sup>61</sup>
- “In some cases this may have been true simply because the father did not know to ask to be considered as a placement or did not know his options in terms of a case plan, etc.”<sup>62</sup>

The statement with the lowest agreement score was: “The father’s kin was considered as a placement/visitation option earlier in the case because the father was represented by counsel.”<sup>63</sup> The average score for this comment was 3.44.<sup>64</sup> Comments to this statement included:

- “I think the father’s kin would as likely have been considered as an option with or without representation by counsel for the fathers.”<sup>65</sup>

---

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 6.

63. *Id.*

64. *Id.*

65. *Id.*

- “In some cases the father was more comfortable giving kin information after speaking with a lawyer.”<sup>66</sup>

Finally, survey respondents were asked their opinions about “the benefits and drawbacks of having father’s project attorneys represent fathers on CHIPS cases.”<sup>67</sup> Comments to this statement included:

- “I think that our cases run a lot better and everyone is more aware of what is going on since this project began. So many times the fathers would come to court and just sit there. Their opinions were not heard and their role in the case was very limited. I think that this program is great for the father’s, the court, and the other parties involved.”<sup>68</sup>
- “It makes the process a lot smoother and the court knows that the father’s will fully understand their rights and have someone advocate for them.”<sup>69</sup>
- “The benefits are their voices are heard more, they are more engaged, we are more likely to have a father to consider for placement, we move quicker to permanency determinations regarding the father, father’s relatives are somewhat more involved, and the cases are smoother. The only drawback is that we have to wait an extra hearing to get the fathers attorney assigned at the beginning, which causes a little bit of a delay in accessing these benefits for fathers. Also, there is some confusion as to whether participant mothers can qualify for this representation. (I’ve had one participant mom receive representation, and that has worked out very well).”<sup>70</sup>
- “CHIPS cases can be very emotionally charged and having both parents represented is in their best interests as well as the children’s. The only drawback is sometimes scheduling, cases are delayed due to conflicts in schedules of attorneys. I don’t feel however that scheduling is enough of a drawback to not continue with the project. It is far better to be represented with scheduling delays than not to be represented.”<sup>71</sup>

---

66. *Id.*

67. *Id.* at 7.

68. *Id.*

69. *Id.*

70. *Id.* at 8.

71. *Id.*

## V. CURRENT STATUS OF THE PILOT PROJECT

Once the survey was completed and shown to county administration and the court, it was agreed that the pilot could be extended. Referrals to the pilot continue to be made on a regular basis.

## VI. CONCLUSION

The preliminary data provides support for the concept that there are major benefits in including the noncustodial parent in the court process early on. In every category surveyed the findings were positive and supportive of the change. Some of the anecdotal evidence revealed success in achieving a healthy living situation for the child that probably would not have happened otherwise. We will continue to explore whether the process should continue.